

BACKGROUND PAPER FOR HEARING
November 17, 2005

**PROPOSAL FOR THE REGULATION OF
GERIATRIC HEALTH CARE ASSISTANTS**

**JOINT COMMITTEE ON BOARDS, COMMISSIONS,
AND CONSUMER PROTECTION**

Senator Liz Figueroa, Chair

SUBJECT: SHOULD CALIFORNIA ESTABLISH A CERTIFICATION PROGRAM FOR GERIATRIC HEALTH CARE ASSISTANTS?

SUMMARY: Consideration of the need for establishing a new regulatory certification program for geriatric health care assistants.

EXISTING STATE LAW: California nursing homes are subject to an extensive body of state and federal requirements, which dictate most aspects of patient care and facility operation. The Department of Health services (DHS) has over 600 employees dedicated to monitoring facility compliance with applicable laws, regulations and policies. DHS conducts annual facility inspections and detailed complaint investigations to ensure continuous compliance.

Federal Medicare/Medicaid (Medicaid is known as Medi-Cal in California) requirements govern most of what happens in a nursing home; California is one of few states that has chosen to maintain a separate set of state laws and regulations for this purpose. Current state law includes a citation system that allows for the imposition of fines and other sanctions against facilities for non-compliance with either state or federal requirements. If DHS determines that a facility is in violation of any state or federal requirement, DHS will issue an immediate notice to correct the violation, followed by a formal citation and accompanying fine. The available citations and their respective fine levels are as follows:

Class “AA” Citations – Violations that have resulted in the direct proximate cause of a patient’s death in a long term care (LTC) facility. Penalties range from \$25,000 - \$100,000.

Class “A” Citations – Violations that present imminent or the substantial probability of danger, death or serious harm to a LTC patient. Penalties range from \$2,000 - \$20,000.

Class “B” Citations – Violations that have a direct or immediate relationship to the health, safety, security or rights of a LTC patient. Penalties range from \$100 - \$1,000.

Willful Material Falsification/Omission – Medical record violations that falsely reflect the condition of a patient or care/services provided. Penalties range from \$2,000 - \$20,000.

In addition to the civil penalty authority, there are a number of other state and federal penalties/sanctions available to ensure provider compliance with rules and regulations (as shown in Figure 1 below). DHS can choose from a range of options to address any situation. These sanctions can be applied individually or in conjunction with one another to respond effectively to facility compliance issues.

<i>Figure 1 – Other Available State/Federal Sanctions</i>
<p>State Sanctions:</p> <ul style="list-style-type: none">• Ban on admissions of any type• Provisional license status with probationary period• Suspension of Medi-Cal payments• Suspension of state license• Termination of Medicare/Medi-Cal certification• Assignment of a temporary manager <p>Federal Sanctions:</p> <ul style="list-style-type: none">• Civil money penalties with fines ranging from \$1,000 to \$10,000 per instance• Civil money penalties with fines ranging from \$50 to \$10,000 per day• Assignment of temporary manager• Denial of Medicare/Medi-Cal payments for new admissions• Denial of payment for all patients• Mandatory transfer of residents• Loss of Nurse Aide Training Program• Directed plan of correction• State monitoring• Directed in-service training

BACKGROUND: In compliance with the sunrise requirements for professions seeking state regulation, the California Association of Health Facilities (CAHF) and the California Association of Homes and Services for the Aged (CAHSA) completed the sunrise questionnaire. These two groups are seeking certification for a new category of caregiver to be known as "Geriatric Medication Technician."

Skilled Nursing Facilities: According to CAHF/CAHSA, there are approximately 1,300 nursing facilities in California, providing approximately 130,000 beds and caring for 300,000 residents per year. Currently, a resident cannot be admitted to a skilled nursing facility without written orders from a physician. Clinical consensus must be reached regarding the appropriateness of nursing facility placement for each of these patients. Before a patient goes to a facility, at least three independent clinicians must agree that it is the right decision: the attending physician, the hospital discharge planner, and the facility's admission's staff. The hospital discharge planner works with the resident, the family or legal representative, and the attending physician to find an appropriate placement. In addition, under federal law, the resident must require skilled nursing services to continue to remain in such a facility. Once residents no longer need skilled nursing services, they must be discharged back to their home or to a lower level of care.

Residents of a skilled nursing facility have the ability to select the nursing home they are admitted into, with certain limitations. However, an assortment of payers must also agree to placement. For example, if the resident's payor source is a managed care plan or Medi-Cal, that resident may be limited in choosing a skilled nursing facility that either has a contract with the managed care plan to provide services to its beneficiaries or to a facility that accepts Medi-Cal patients.

Medicare requires that every patient have a three-day hospital stay prior to admission and a care plan that involves active treatment not available in a "community" setting (e.g., assisted living facility, group home, and personal residence). Medi-Cal policy only authorizes admission if the patient's clinical condition meets stringent medical necessity criteria. Medi-Cal uses three separate administrative processes to ensure that this is the case: Treatment Authorization Requests (TARs), Preadmission Screening and Resident Review (PASRR), and Minimum Data Set (MDS) reporting. Every admission is carefully documented on the basis of the clinical, behavioral, and functional criteria inherent in each of these processes – including a definitive statement on “why community placement is not an option.” For the remaining admissions, most of which are members of a managed care plan, case managers must approve placement.

Scope of Practice and Licensing Requirements: Once in a facility, the direct care is provided by three categories of nursing staff: Certified Nurse Assistant (CNA), Licensed Vocation Nurse (LVN), and Registered Nurse (RN). According to CAHF/CAHSA, there are approximately 53,300 direct care/nursing staff employed in nursing facilities, which are further broken down as follows:

- 11% registered nurses (RNs),
- 19% licensed vocational nurses (LVNs), and
- 70% certified nurse assistants (CNAs).

Each nursing staff category has different levels of training. Generally, RN training can be accomplished in several ways, including through a four-year baccalaureate degree, a three-year hospital diploma program, or a two-year associate degree; LVN training is most typically a year in duration and conducted through a community college or adult vocational education program;

and CNAs receive 160 hours of initial training.

Certified Nurse Assistant (CNA) Scope of Practice: Under the supervision of a licensed nurse (registered nurse or licensed vocational nurse), a CNA provides basic nursing services to ensure safety, comfort, personal hygiene and protection of patients/residents in a licensed long-term care or intermediate health care facility.

A CNA may provide personal care and comfort measures, such as:

- Bathing.
- Shaving.
- Dressing and undressing.
- Toileting.
- Incontinence care.
- Routine skin care.

A CNA may also perform various procedures, such as:

- Feed patients.
- Take vital signs (temperature, pulse, respirations and blood pressure).
- Measure intake and output.
- Collect specimens of urine, stool and sputum.
- Assist with bowel and bladder retraining.
- Insert cleaning enemas.
- CPR with certification.
- Chart the medical record.
- Apply non-prescription topical ointments, creams, lotions, and solutions to intact skin.
- Provide care to patients with urinary, gastric, oxygen, and intravenous tubing (excluding inserting, suctioning, changing or repositioning the tubes).

A CNA may not perform any nursing services that require a license as LVN or RN. Examples are:

- Perform invasive procedures.
- Pass/administer medications or give injections (This includes the administration of any medication associated with the treatment of eyes, ears, nose, mouth, or genitourinary tract.).
- Perform ostomy care or apply wafer to skin.
- Insert, irrigate or replace catheters.
- Suctioning.
- Perform sterile procedures (dressing changes, debridement, tracheostomy care).
- Administer gastrostomy or naso-gastric feedings.
- Administer oxygen.

CNA Certification Requirements:

- Be at least 16 years of age.
- Meet pre-screening requirements (health and criminal background screening).
- Complete a minimum of 50 hours of theory (classroom training) and 100 hours of supervised clinical training in a nursing facility, or:
 - Be eligible through an equivalent training program; or
 - Be eligible through reciprocity from another state.
- Successfully complete a competency exam conducted by an approved by the American Red Cross or the Chancellor's Office California Community Colleges – Nurse Assistant Training and Assessment Program (COCCC-NATAP).

Licensed Vocational Nurses (LVN):**LVN Scope of Practice:**

Under the supervision of a registered nurse or a physician the LVN may perform services requiring technical and manual skills that include:

- Basic assessment (data collection).
- Basic nursing services.
- Administer oral medications and medications by injection.
- When ordered by a physician and with demonstrated competency, may perform skin tests and administer immunizations.
- Apply communication skills for patient care and education.
- Contribute to the development and implementation of a teaching plan related to self-care for the patient.
- Upon completion of additional courses approved by the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) a LVN with certification may draw blood and start and administer non-medicated intravenous solutions.

LVN Licensure Requirements:

Traditional LVN licensing is achieved by:

- Graduation from high school and successful completion of approved or accredited vocational nursing program that consists of not less than 1,530 hours or 50 semester units on a full or part-time basis, that includes:
 - 576 theory (classroom) hours including at least 54 hours in pharmacology.
 - 954 clinical hours.
- Graduation from an out-of-state accredited practical/vocational nursing program.
- Equivalency to graduation from an accredited school of vocational nursing.

Alternative LVN licensing is achieved by one of the following ways:

- 51 months of paid direct care experience and completion of a pharmacology course, specifically:
 - 51 months of paid general duty bedside nursing experience within the previous 10 years in a general acute care facility, at least half of which is within the 5 years prior to the date of application (note: 8 months of skilled nursing facility experience may be substituted for general medical-surgical experience).
 - Completion of a course of at least 54 theory hours of pharmacology.
- 36 months of paid direct care experience, plus theory and supervised clinical coursework, specifically:
 - Completion of 36 months of verified full-time paid work experience in a general acute care facility within the previous 10 years prior to the date of application, with at least 12 months acquired during the last 24 months prior to the date of application. (8 months of skilled nursing experience may be substituted for general medical-surgical experience).
 - 450 theory (classroom) hours of a course approved by the BVNPT, including 54 hours of pharmacology.
 - 175 hours of supervised clinical experience in which the clinical instructor certifies the student's competency to practice basic nursing skills.
- Active Military Duty in Medical Corps of Armed Forces, specifically:
 - Completion of a basic course of instruction in nursing required by the particular branch of the armed forces.
 - 12 months of bedside patient care.
 - Honorable discharge.

Registered Nurse (RN):

Scope of Practice:

- Independent nursing functions (those that do not require authorization by another profession).
- Dependent nursing functions (those that require a physician's order).

- Interdependent functions (those that are implemented based on the RN's judgment and prior collaborative agreement with a physician and that would be considered practice overlapping with physicians) that help people cope with difficulties associated with potential or actual health or illness problems and the treatment of these problems that require a substantial amount of scientific knowledge or technical skill.
- Direct and indirect patient care services to insure safety, comfort, personal hygiene, and protection of patients.
- Performance of disease prevention and restorative measures.
- Performance of skin tests, immunization techniques, and withdrawal of human blood from veins and arteries.
- Direct and indirect patient care services necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by a physician.
- Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition in order to determine abnormal characteristics.
- Implement appropriate reporting, referral or use of treatment guidelines ("standardized procedures") specific to an observed abnormality.
- Implement change in treatment regimen based on treatment guidelines created collaboratively with physicians, nurses and others.

RN Licensure Requirements:

- Completion of preliminary educational requirements as determined by the Board of Registered Nursing (BRN) (i.e., prerequisite education prior to entering an approved program of instruction).
- Successfully complete a BRN-approved program in a school of nursing in California or in a school of nursing in another state equivalent to the minimum requirements for licensure in California.
- Training in a country outside of the country that is equivalent and complies with other requirements for licensure, and passage of the licensing examination.
- Served on active military duty and completed a course of instruction to qualify as a medical technician – independent duty, or equivalent rating in his/her particular branch of the armed forces, and with an honorable discharge.
- LVNs are eligible for licensure as an RN after completion of 30 units in nursing and science related subjects. This is known as the "30 unit option." California (University of California, California State University, and California Community Colleges) BRN-approved pre-licensure RN programs must offer this option to California LVNs.

REGULATION IN OTHER STATES: According to CAHF/CAHSA, legislation similar to the concept of creating a new Geriatric Medication Technician category has passed in 18 other states, and has been sponsored mainly by the long-term care associations in each of those states.

Those states are:

Colorado
Indiana

Iowa
Minnesota

Kansas
Michigan

Kentucky
Nebraska

New Jersey
Oregon

Rhode Island
Texas

North Dakota
Wisconsin

Oklahoma
Wyoming

LEGISLATION PROPOSING CALIFORNIA REGULATION: In February 2005, Assemblymember Dymally introduced AB 704, a CAHF-sponsored bill that would require the certification and regulation of geriatric health care assistants by the Board of Vocational Nursing and Psychiatric Technicians. As currently drafted, the proposed scope of practice for geriatric health care assistants appears to parallel the scope of practice of CNAs. However, it appears that the scope of practice of the geriatric health care assistant would eventually evolve into a level of certification between CNA and LVN.

Specifically, this bill would:

- 1) Define "board" as the Board of Vocational Nursing and Psychiatric Technicians of the State of California.
- 2) Define "geriatric health care assistant" as a person who meets the requirements of the bill and is certified as a geriatric health care assistant by the board.
- 3) Define "resident nurse" as a vocational nurse licensed by the board or a registered nurse licensed by the Board of Registered Nursing, who possesses a current valid certificate to practice, and who is employed by the geriatric residence.
- 4) Requires the board to certify a person as a geriatric health care assistant if he or she meets all of the following requirements:
 - a) He or she submits a written application for certification on a form provided by the board and pays an application fee prescribed by the board.
 - b) He or she has been gainfully employed, on a full-time basis, in a geriatric residence for a period of no less than 12 consecutive months under the supervision of a resident nurse.
 - c) He or she has received on the job training, in the course of his or her employment pursuant to subdivision (b), in all of the following subjects:
 - i) Personal care and comfort functions for the elderly, such as assistance with mobility, bathing, care of hearing aids, glasses, prosthetic devices, oral hygiene, perineal care, toileting and incontinence care.
 - ii) Performing the Heimlich maneuver.
 - iii) Insertion of cleaning enemas and laxative suppositories.
 - iv) Providing care to patients with urinary, gastric, oxygen, and intravenous tubing, excluding inserting, suctioning, changing, or repositioning the tubes.
 - v) Taking vital signs and measuring height and weight.
 - vi) Coordination of resident care duties, such as art, hobby, and recreational and socialization activities.

- 5) Establishes procedures for license issuance and renewal, and collection of license fees.
- 6) Establishes authority for the board to order the denial of an application for the issuance of a license, the suspension or revocation of a license, or the imposition of probationary conditions upon, a geriatric health care assistant certificate for unprofessional conduct, which includes, but is not limited to, any of the following:
 - a) A violation of provisions of the bill.
 - b) A violation of the Medical Practice Act.
 - c) A violation of regulations adopted by the board.
- 7) Prohibits persons who have not been certified to practice as a geriatric health care assistant from doing any of the following:
 - a) Practice as a geriatric health care assistant or in a similar capacity.
 - b) Hold himself or herself out as a "geriatric health care assistant."
 - c) Use any other term indicating or implying that he or she is a geriatric health care assistant.

QUESTIONS:

- 1) Why is the existing licensure structure inadequate, and what harm, if any, exists within the current regulatory licensing structure?
- 2) What is the level of support for state licensure of geriatric health care assistants in California?
- 3) Will the creation of a new regulatory licensing program for geriatric health care assistants increase access to care in nursing facilities?
- 4) Will creation of a new regulatory licensing program for geriatric health care assistants increase the quality of care in nursing facilities?